



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Subject: Response to Your Comments

We have reviewed your comments on the DRAFT Memorandum of Agreement (MOA) between US EPA and WDNR on implementation of Wisconsin's Environmental Cooperation Pilot Program. Your comments raise a number of questions about how the program will be implemented, especially with regard to public participation, expressing concern because they were not addressed in the MOU. However, these issues were not addressed simply because the MOU was only meant to establish ground rules for interaction between EPA and DNR, not to be a general blueprint for the entire program. We address your specific questions below, but wish to assure you generally that WDNR is committed to a program that is consistent with the principles in the EPA-ECOS agreement, including the principle about public participation. We also appreciate that you have concerns about what actions might be taken under the agreement. However, we expect that the projects developed in this program will test new and innovative approaches that can ultimately help improve the environmental protection system for all concerned.

Your comments seem to fall into two categories – comments directly on the environmental cooperation program and comments on the EPA/DNR working relationship as set forth in the MOA. Your points are addressed as they appeared in your letter:

- 1) Scope of the MOA – it is very explicit that this MOA only covers the implementation of s. 299.80, Wis. Stats. Any future projects would proceed within the framework of the Joint EPA/State Agreement to Pursue Regulatory Innovation.
- 2) Enforceability – The signed Attorney General’s opinion will be attached as Attachment Four to the MOA rather than repeating the text in the MOA.
- 3) The terms “Imminent and Serious” are taken directly from the enabling statute and need no further definition outside the statute
- 4) Goals of S. 299.80, Wis. Stats – The actual statutory language will be attached to the MOA as Attachment One so the language will not be repeated within the document.
- 5) Integrate ECOS Principles into MOA – It is intended that the Program proceed consistent with the ECOS principles. This MOA identifies the coordination needed between the two agencies to be responsive in implementation of Wisconsin’s Environmental Cooperation Program.
- 6) Evaluation – unsure why a baseline of the variances issued by WDNR over the last 5 years would be valuable in judging the variances issued to the pilot companies. A better measure would be which variances requested are authorized under existing law and which would only be possible under s. 299.80, Wis. Stats.
- 7) Measurement information will be made available to the public in the annual report on the implementation of the Environmental Cooperation Pilot Program as this is the information from which public policy decisions will be made. At this time the specific measures have not been developed. The data will be reviewed by the agencies for adequacy and posted to WDNR’s web site. The goals of the environmental cooperation pilot program are spelled out in s. 299.80 Statutes.
- 8) EPA is not in a passive role in the evaluation phase. WDNR has indicated for the past year that we will be convening an advisory group to assist with development of measurement questions and review of results of the pilots. This was clarified in the MOA.
- 9) Public Participation – The public participation portion of the pilot law is defined in s. 299.80 Statutes. The public is not excluded from assistance from either agency by this MOA and this MOA does not change Wisconsin’s open meetings laws or the delegation agreements under which permits, approvals and licenses are issued. Language has been added to clarify that the public can expect the IIT to respond to them in an expeditious manner also.

We are finalizing the Memorandum of Agreement between the two agencies and will be signing the completed document on March 25 at 11:00 am in the Governor’s Conference Room at the State Capitol in Madison. Copies of the completed document will be forwarded to you or can be accessed via the DNR web page. Thank you for taking the time to review this document and we look forward to working with you on these pilot projects over the next few years.

Sincerely,

Lynda M. Wiese  
Director, Bureau of Cooperative Environmental Assistance

Cc: Marilou Martin US EPA Region 5  
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